

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

CHARLESTON DIVISION

DIANE MCCOY, et al.,

Plaintiffs,

v.

CIVIL ACTION NO. 2:09-CV-0993

ACTAVIS TOTOWA LLC, et al.,

Defendants.

MEMORANDUM OPINION AND ORDER

Pending is the plaintiffs' motion for voluntary dismissal of this action without prejudice [Docket 14].

On September 8, 2009, the plaintiffs instituted this action. On January 6, 2010, the plaintiffs filed the instant motion pursuant to Federal Rule of Civil Procedure 41(a)(2). The referenced Rule provides that "an action may be dismissed at the plaintiff's request only by court order, on terms that the court considers proper." Fed. R. Civ. P. 41(a)(2). The defendants notified the court that they intended to respond to the motion but no response has been received following the passage of ample time.

Accordingly, I **GRANT** the motion to for voluntary dismissal but with one condition. Should the plaintiff elect to re-file the action, she must do so within this MDL by an original filing in this District. An alternate course would result in the defendants losing the valuable protections afforded by pretrial orders previously entered in this MDL, especially with respect to seeking relief under Rule 11 and associated requests for admission. In order to uphold the purpose of streamlining

pretrial discovery in these cases and doing so in a consistent and fair manner, it is proper to condition the plaintiffs' dismissal to account for the concerns expressed above.

The court **DIRECTS** the Clerk to send a copy of this Order to counsel of record and any unrepresented party.

ENTER: February 10, 2010



Joseph R. Goodwin, Chief Judge